

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO. 527 OF 2018
WITH
CRIMINAL APPLICATION IN REVISION NO. 494 OF
2018
IN
CRIMINAL REVISION APPLICATION NO. 527 OF 2018**

1. Giridhar s/o Nakul Yadav
Age : 43 Years, Occu. : Service,
Residing at : Parmar N 1129,
Vanavadi, Pune.
 2. Ganesh Bhanudas More
Age : 36 Years, Occu. : Service,
Residing at : S.No.203, Sadesatranali,
Malwadi, Hadapsar, Pune.
 3. Avinash Santaram Deokar
Age : 29 Years, Occu. : Business,
Residing at : S.No.121, Shinde Vasti,
Vaidwadi, Hadapsar, Pune.
 4. Ravindra Sopan Mane
Age : 33 Years, Occu. : Nil,
Residing at : S.No.131,
Shinde Vasti, Vaidwadi, Hadapsar, Pune.
- ...Applicants
(Original Accused Nos.1 to 4)

Versus

The State of Maharashtra
Through Senior Police Inspector, ...Respondent
Hadapsar Police Station, Pune. (Original Complainant)

Mr.Ravindra Keshavrao Adsura a/w Mr.Pawan Mali and Mr.Yash Prashant Sonavane:-	Advocates for Applicants.
Mr.V.N.Sagare:-	APP for Respondent - State.

CORAM : S. M. MODAK, J.**DATE : 4th APRIL 2024****JUDGMENT :-**

1. Heard learned Advocate Shri.Ravindra Adsure along with Advocate Shri.Pawan Mali for the Applicants - convicted Accused and learned APP.

2. These Applicants were tried by the Court of JMFC, Cantonment Court, Pune for the offences punishable under Sections 392, 394 read with Section 34 of the Indian Penal Code, 1860 (hereinafter, "the IPC"). After examining inasmuch as 24 witnesses on behalf of the prosecution and one witness on behalf of the defence, the trial Court was pleased to acquit all of them as per the judgment dated 18th February 2017.

3. When the State of Maharashtra preferred an Appeal bearing Criminal Appeal No.556 of 2017, it was heard by the Court of Additional Sessions Judge - Pune presided over by the District Judge Shri.R.N.Sardesai and he closed the matter for judgment on 19th July 2018. Till the time he was looking after the said file, he could not pronounce the judgment. Due to change of designation of the District

Judges posted at Pune, the file was transferred to the Court of Additional Sessions Judge-Pune presided over by District Judge Shri.A.S.Bhaisare and he pronounced the judgment on 4th September 2018. He converted the judgment of acquittal into the judgment of conviction and

- a. convicted all the Applicants for the offence punishable under Section **392 read with 34 of IPC.**
- b. acquitted them for the offence under Section **394 read with 34 of IPC.**

That is why, present Revision Application is filed by them.

4. It was admitted on 27th November 2018. Earlier to that, the substantive sentence was suspended on 16th October 2018. There is one more Criminal Application No.494 of 2018 praying for staying the conviction. As per the order dated 10th July 2019, this Court has directed to place that Application along with Revision on final hearing board in the week commencing from 26th August 2019. It is true that on 6th June 2023, an attempt was made to obtain a date for final hearing. This Court granted a liberty to the Applicants to file necessary Application. This *praecipe* is moved on 12th March 2024 and that is why, the matter is

listed today.

5. During arguments, learned Advocate Shri.Adsure submitted that the Applicant No.1 - Giridhar is diagnosed as suffering from lungs cancer and it is at fourth stage. He is having necessary papers. The photo copies are tendered. They are taken on record and marked as Annexure-X.

6. In view of that, I have heard his Revision Application. It is true that the judgment is challenged on various grounds including:-

- (a) An opportunity of hearing was not granted by the Court presided over by Additional Sessions Judge Shri.Bhaisare.
- (b) On perusal of the judgment, one cannot say that the concerned Judge has applied judicial mind and after reappreciation, came to the conclusion that reversal is required.
- (c) Even on merits, it is submitted that the judgment of acquittal by the trial Court is proper and in fact, no interference was warranted.

7. Learned Advocate Shri.Adsure has pointed out the contents of the impugned judgment and the relevant notings from the roznama of the Appellate Court. **There are two options available before this Court. They**

are:-

(a) Either to set aside the judgment and remand the matter back to the Appellate Court for fresh hearing

OR

(b) To decide the Revision by this Court only on merits.

8. The second option cannot be considered for the simple reason that when the impugned judgment is perused, it is clear that fresh opportunity of hearing was not granted by the learned Additional Sessions Judge. So, there is no option left but **to remand the matter before the Appellate Court**. I will give reasons for this conclusion.

Consideration

9. During arguments, the roznamas of the following dates are pointed out to me:-

Roznamas

<u>Sr.No.</u>	<u>Date</u>	<u>Events happened</u>
(a)	19 th July 2018:	Learned Judge heard the arguments and closed the matter for judgement.
(b)	26 th July 2018: 30 th July 2018: 31 st July 2018:	Learned Judge could not pronounce the judgment.
(c)	7 th August 2018:	Court was vacant.

(d)	14 th August 2018:	Court was vacant.
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10. It is clear that learned Additional Sessions Judge Shri.Sardesai has heard the arguments of both the sides on 19th July 2018 and closed the matter for judgment. For some reason or other, he could not pronounce the judgment on 26th July, 30th July and on 31st July 2018. Furthermore, it reveals that on 7th August 2018, the Court was vacant. It continued on 14th August 2018. There is a remark that the Appeal is transferred to the Court of District Judge - 2 and Additional Sessions Judge as per the order of the District Court. It is of dated 16th August 2018. Further roznamas disclose as follows:-

Further Roznamas

<u>Sr.No.</u>	<u>Date</u>	<u>Events happened</u>
(a)	18 th August 2018:	It records, case is fixed for judgment.
(b)	24 th August 2018:	It records, the Court is busy in High Court time bound matter.
(c)	29 th August 2018:	The Judge was busy in administrative work.
(d)	4 th September 2018:	Judgment was pronounced.

11. All these roznamas does not disclose that after the transfer, learned Additional Sessions Judge

Shri.Bhaisare has heard the arguments of the parties and then pronounced the judgment.

References in judgment

12. Whereas, in the impugned judgment, learned Additional Sessions Judge in few of the paragraphs has reproduced the submissions advanced by the learned Advocates. They are as follows:-

<u>Sr.No.</u>	<u>Para No.</u>	<u>Submissions recorded by Appellate Court</u>
(a)	Para No.9:	Submissions by learned Counsel Smt.Deshmukh for the State.
(b)	Para No.10:	Submissions of learned Counsel for Accused No.1.
(c)	Para No.11:	Submissions of learned Counsel for Accused No.2.
(d)	Para No.12:	Submissions of learned Counsel for Respondent Nos.3 and 4.
(e)	Para No.13:	The Appellate Court recorded the submissions that no interference is warranted.
(f)	Whereas, in Para No.60:	The learned Judge has recorded the happenings before the earlier Judge. He records it as follows:- (i) Matter was heard lastly on 19th July 2018 and then posted for judgment on 26th July 2018, 30th July 2018. (ii) There is a change of designation as per the order of High Court. (iii) As per the order dated 16th

		August 2018 passed by the District Court - Pune, the Appeal was withdrawn from the file of District Judge - 3 and transferred to the Court presided over by Additional Sessions Judge Shri.Bhaisare. Further he records, in second session of every day he is busy in District Court employees recruitment process.
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13. However, **in the entire judgment, he has never said that he personally heard learned APP and learned Advocate for the Applicants.** So, the issue is once both the sides have argued the matter before the earlier Judge whether fresh hearing is required ?

Judgments

14. Learned Advocate Shri.Adsure to buttress his submission about necessity of fresh hearing, relied upon the following judgments:-

- (i) ***Gullapalli Nageswara Rao and Others v/s. Andhra Pradesh State Road Transport Corporation and Another***¹
- (ii) ***Union of India v/s. Andrew***²

15. It is true that both these judgments deal with dispute

¹ AIR 1959 SC 308

² 1996 (3) L.L.N.50

arising out of civil law. Whereas, in **Gullapalli** case (supra), the Constitutional Bench was dealing with the interpretation of the provisions of '*the Madras Government Business Rules and Secretariat Instructions*'. In those Rules, the procedure of hearing was to be conducted by the Secretary. Whereas, the decision was to be taken by the Chief Minister. The Hon'ble Supreme Court insisted that hearing and decision should be by the same Authority. *The said procedure offends the basic principle of judicial procedure.* The same principle is reiterated in **Andrew's** case.

16. Learned APP has invited my attention to the contents of the impugned judgment but he is not disputing about the requirement of fresh hearing. It is true that many a time, it happens that one Judge has heard the matter but for some reason or other, he could not pronounce the judgment. In that eventuality, at least he himself or the concerned parties could have sought an administrative order from the learned Principal District Judge. Unfortunately, it has not happened. It is true that if one Judge has heard this matter and if new Judge has to decide, there may be

inconvenience to all the stake holders. **But, in any eventuality, a new Judge cannot deny an opportunity of hearing to the parties.**

17. Why hearing is required because it gives an opportunity to the parties to put forth their case before a Judge seized of the matter. Ultimately, delivering a judgment is a process involving all the stake holders. A Judge dealing with a judgment needs to understand a case put up by every side and then to take a decision on the basis of accepted principles of law. **The hearing is one of the components of principles of natural justice. This is true on administrative side, this is more true when the matter is decided judiciously.** So, this procedure has not been followed by the learned Additional Sessions Judge. This was more true when he was about to reverse the judgment of acquittal into the judgment of conviction. **The judgment of conviction is having far reaching consequences. There is a reason to believe that the learned Additional Sessions Judge in haste, has decided the Appeal.**

18. There is one more ground canvassed to challenge the

impugned judgment. While reversing the judgment, the learned Additional Sessions Judge has not fulfilled its responsibility of ascertaining how the findings by the trial Court were erroneous. No doubt, it is true that appreciation of evidence can be done by the Appellate Court but **it does not mean that it should be done without giving an opinion as to how the trial Court findings were erroneous. This requirement cannot be given go-bye.**

19. I have read the entire judgment with the assistance of both the sides. In **Para No.1 to Para No.14**, he has reproduced the prosecution case. Whereas, in **Para No.15 to Para No.59**, he has reproduced what the witnesses have deposed and what are the inferences. **Nowhere he has discussed how the trial Court was wrong in acquitting the Applicants.** When we say that appreciation can be done by the Appellate Court, it does not mean that it can be done without referring to the findings of the trial Court. The trial Court is a Court which gets an opportunity to hear the witnesses, to mark their demeanour. An Appellate Court does not get that opportunity. The observations of the trial Court are recorded

by way of finding. So, **the Appellate Court if disagree with those findings, needs to make a comment on those findings. Unfortunately, it is absent. For this ground also, the judgment needs to be set aside.**

20. If the judgment is set aside on above two grounds, it may not be proper to this Court to hear this Revision on merits. Matter needs to be remanded.

21. There is a request made by learned Advocate Shri.Adsure and Mr.Mali that the Appeal was pending before the Sessions Court since 2017 and the Applicant No.1 is suffering from forth degree of cancer and the Applicant Nos.1 and 2 were dismissed from their services by the Home Department. So, there is a request to direct the Appellate Court to decide the Appeal on priority basis. It can be done. Hence order:-

:- ORDER :-

- (i) Revision is allowed.
- (ii) The judgment dated 4th September 2018 delivered by the Court of Additional Sessions Judge - Pune in Criminal Appeal No. 556 of 2017 holding all the Applicants guilty for the offence punishable under Section 392 read with 34 of

IPC is set aside.

- (iii) If they have paid fine, it be returned to them.
- (iv) The matter is remanded back to the Sessions Court – Pune for fresh consideration.
- (v) The learned Principal District Judge – Pune may assign the Appeal to any Additional Sessions Judge and the concerned Court is directed to decide the Appeal on priority basis and in any case, not later than three (3) months from 25th April 2024.
- (vi) The Applicants are directed to appear before the concerned Court on 25th April 2024.
- (vii) The Office is directed to see that the Record and Proceeding be sent to the Appellate Court within fifteen (15) days.

22. In view of above, Revision Application is disposed of.

23. In the light of disposal of Revision Application, Interim Application is also disposed of.

[S. M. MODAK, J.]